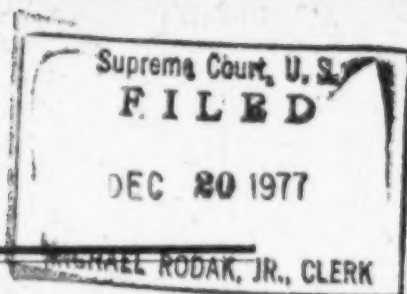


No. 77-594



In the Supreme Court of the United States

OCTOBER TERM, 1977

RICHARD STONE, PETITIONER

v.

EXPORT-IMPORT BANK OF THE UNITED STATES, ET AL.

***ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT***

**MEMORANDUM FOR THE RESPONDENTS
IN OPPOSITION**

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, a United States Senator from Florida, contends that the Bank for Foreign Trade, an agency of the Soviet Government, is not a "person" within the meaning of the fourth exemption of the Freedom of Information Act, 5 U.S.C. 552(b)(4), and that confidential commercial and financial information obtained from the Bank for Foreign Trade is therefore not exempt from disclosure under the Act.

In July 1974, petitioner requested that the Export-Import Bank of the United States ("Eximbank") provide him with a copy of a loan agreement between the Eximbank and the Bank for Foreign Trade of the Soviet Union that was designed to finance Soviet acquisition of

equipment, phosphates, and services in the United States for the construction of a fertilizer plant in the Soviet Union. Eximbank furnished petitioner with a copy of the resolution of its board approving the loan and of a press release, both of which set forth the basic terms of the agreement and disclosed that the agreement consolidated two separate loans, a \$180 million loan from Eximbank and a \$180 million loan from a consortium of private American banks. Eximbank, however, declined to provide petitioner with the agreement itself, on the ground that it contained confidential commercial and financial information (Pet. App. 6-10).

Plaintiff then filed suit, seeking disclosure of the agreement between Eximbank and the Bank for Foreign Trade, but not of the agreement between the Bank for Foreign Trade and the private American banks (Pet. 5; Pet. App. 12). The district court granted summary judgment for respondents on the ground that the agreement between Eximbank and the Bank for Foreign Trade was exempt from disclosure under 5 U.S.C. 552(b)(4), pertaining to "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Pet. App. 1-3). The court of appeals affirmed (Pet. App. 4-16).

Petitioner's principal contention here, as in the courts below, is that an agency of a foreign government is not a "person" within the meaning of 5 U.S.C. 552(b)(4). That contention is foreclosed by the statutory definitions of "person" and "agency". 5 U.S.C. 551(2) provides (emphasis supplied):

"[P]erson" includes an individual, partnership, corporation, association, or *public or private organization other than an agency.*

In turn, 5 U.S.C. 551(1) provides in pertinent part: "'agency' means each authority of the Government of the United States * * *." An agency of a foreign government therefore falls within the statutory definition of "person", as the courts below held. See also *Neal-Cooper Grain Co. v. Kissinger*, 385 F. Supp. 769 776 (D. D.C.). Cf. *Constructores Civiles de Centroamerica, S.A. v. Hannah*, 459 F. 2d 1183, 1190 n. 14 (C.A. D.C.).

Petitioner's claim (Pet. 12-13) that, nothing in the legislative history of the Act indicates that Congress specifically considered agencies of foreign governments, even if true,¹ would neither demonstrate a legislative intent to exclude such agencies from the definition of "person" nor warrant overriding the clear statutory language. Moreover, petitioner offers no reason why Congress would have desired to treat confidential financial information obtained from agencies of foreign governments differently from similar information obtained from private or non-foreign public organizations.²

¹As the court of appeals noted (Pet. App. 14-15, n. 6) however, the legislative history of the Act shows that Congress was advised by the Comptroller General, who objected to the broad definition of "person" on the ground that, in his view, it would include "aliens—even enemy aliens * * *."

²The court of appeals also correctly rejected petitioner's claim (see Pet. 8) that the agreement, although containing commercial or financial information, was not privileged or confidential. The court stated (Pet. App. 16a, n. 8) that that argument "is premised on a supposed legislative intent to protect only United States citizens and businesses in the Act's fourth exemption," and thus is merely a restatement of petitioner's principal argument.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

DECEMBER 1977.